IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 105 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASU DHANABHAI GADHVI

Versus

STATE OF GUJARAT

Appearance:
MR YOGESH S LAKHANI for appellant
MR KP RAVAL, APP for Respondent

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellant, who is convicted for the offence punishable under Sec.66(b) of the Bombay Prohibition Act and Sec.22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 by the learned Sessions Judge,

Rajkot in Sessions Case No.109 of 1992, has filed this appeal challenging the said judgment.

2. The facts in nutshell leading to the filing of this appeal are as under:

2.1 On August 6, 1992, when Assistant Sub Inspector, Mr.P.G.Jadeja was on duty at Gundavadi Police Chowki at Rajkot City, he received an information that one Vasu Dhana Gadhvi, who was residing near Hudco bus-stand in Somanath Estate, Kotharia Main Road, was having illegally possessed narcotic substance i.e. charas. On receiving the information, PSI, Mr.Jadeja, in the company of two panchas and the members of the staff, went to the place where the appellant was residing. The appellant was known to ASI, Mr.Jadeja and on seeing the appellant, ASI, Mr.Jadeja carried out the personal search of the appellant by complying with the mandatory provisions of Sec.50 of the Act. On search of the appellant being carried out, narcotic substance of charas weighing 3 grams was seized under panchnama. ASI, Mr.Jadeja forwarded the muddamal charas and the appellant to `C' Division Police Station, Rajkot and lodged the complaint against the appellant and after forwarding the report to the Police Station, an offence came to be registered against the appellant at the `C' Division Police Station. On completion of the investigation and after receiving the report from the F.S.L., charge-sheet came to be filed against the appellant for the offence punishable under Sec.27 of the Act. Said charge-sheet was registered as Sessions Case No.109 of 1992.

3. The charge was framed against the appellant for the offence punishable under Sec.66(b) of the Bombay Prohibition Act and under Sec.20(b) of the Act. The appellant claimed not guilty to the charge. The prosecution examined following witnesses. P.W.1-Hitesh Jayantibhai, Ex.6; P.W.2-Mukesh Ramaniklal, Ex.9; P.W.3-Pravinsinh Govubha, Ex.10; P.W.4-Jilubhai Ramjibhai, Ex.20; P.W.5-Valjibhai Madhabhai, Ex.24 and P.W.6-Ramjibhai Jivanbhai. The prosecution produced documentary evidence such as complaint, panchnama of the seizure of the contraband substance, report of F.S.L., etc. to prove the case against the appellant.

4. On completion of the prosecution evidence, the appellant was examined in respect of evidence produced against him and his statement came to be recorded under Sec.313 of the Code of Criminal Procedure. The defence of the appellant was that he had not committed any offence and he was falsely involved in the present case.

5. On appreciation of the oral as well as documentary evidence and the submission of the advocates appearing at the trial, learned Sessions Judge by the impugned judgment convicted the appellant for the offence under Sec.20(b) of the Act and sentenced him to undergo R.I. for 10 years and to pay fine of Rs.1,00,000/- in default, R.I. for six months which has given rise to file this appeal by the appellant.

6. Learned counsel for the appellant, Mr.Y.S.Lakhani and learned APP, Mr.K.P.Raval have taken us through the record and proceedings of Sessions Case No.109 of 1992. Learned counsel for the appellant has submitted that admittedly the Raiding Officer was in the rank of Assistant Sub Inspector and, therefore, he was supposed to comply with the mandatory provisions of Secs.42(1) and 42(2) of the Act. Learned APP, however, tried to support the judgment of the Sessions Court.

7. Having gone through the oral as well as documentary evidence, it becomes evident that the raid was carried out on the strength of the prior information received by ASI, Mr.Jadeja. The said information was not reduced into writing and copy of the information was not forwarded to the Superior Officer as per the provisions of Sec.42(2) of the Act. It is settled legal principle that provisions of Sec.42(2) are mandatory and the whole prosecution case can fail on such non-compliance of the provisions of Sec.42(2) of the Act. Learned counsel for the appellant has placed reliance on the decision of the Apex Court in Abdul Rashid Ibrahim Mansuri Vs. State of Gujarat, 2000(2) G.L.R. page 1129. The Supreme Court has ruled that being a Police Officer much above the rank of a Constable, would be "any such Officer" as envisaged in Sec.42 of the Act. If he had reason to believe from information given by any person that a narcotic drug was kept or concealed in any building, conveyance or enclosed place the requirements to be complied with by him before he proceeded to search any such building or conveyance or enclosed place were twofold. First is that, he should have taken down the information in writing. Second is that, he should have sent forthwith a copy thereof to his immediate official superior. In the present case, admittedly, ASI, Mr.Jadeja on receiving the information had not reduced it into writing and had not forwarded its copy to his superior Officer. Therefore, on this question alone, the conviction recorded by the learned Sessions Judge requires to be quashed and set aside. Consequently, the sentence imposed by the learned Sessions Judge also deserves to be quashed and set aside.

8. As a result of the foregoing discussion, without entering into any other points canvassed by the learned counsel for the appellant and the learned APP, we are of the opinion that this appeal is required to be allowed.

9. This appeal is accordingly allowed. Conviction recorded on the appellant by the learned Sessions Judge, Rajkot in Sessions Case No.109 of 1992 for the offence under Sec.20(b) of the Act is quashed and set aside and consequently, the sentence imposed on the appellant is also hereby quashed and set aside. The appellant be released forthwith from the custody if his presence is not required in any other case. Muddamal be destroyed in terms of the direction given by the learned Sessions Judge in the impugned judgment.

(M.H.KADRI,J.)

(R.P.DHOLAKIA,J.)

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